Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition for Declaratory Ruling that Text Messages and Short Codes are Title II Services or are Title I Services Subject to Section 202 Non-Discrimination Rules	)	WT Docket No. 08-7

COMMENTS OF METROPCS COMMUNICATIONS, INC.

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TABLE OF CONTENTS

Summary

MetroPCS Communications, Inc. ("MetroPCS") respectfully files these Comments in response to the Petition for Declaratory Ruling (the "Petition") filed by Public Knowledge, Free Press, Consumer Federation of America, Consumers Union, EDUCAUSE, Media Access Project, New America Foundation, and U.S. PIRG (the "Petitioners") requesting the Commission clarify the regulatory status of text messaging services, including short-code-based services, sent from and received by mobile telephones, and declare that such services are governed by the anti-discrimination provisions of Title II of the Communications Act in the above captioned proceeding. Basic short text messaging services ("SMS") from mobile telephone number to mobile telephone number are appropriately classified as commercial mobile radio services ("CMRS"), but MetroPCS believes that short code services are neither CMRS nor Title II services, and should not be subject to any regulation.

SMS that goes between North American Numbering Plan ("NANP") mobile telephone numbers fits easily into the definition of CMRS service, and thus should be regulated the same as other CMRS services. The Commission should follow its recent analysis in the automatic roaming proceeding and clarify that such SMS services are CMRS services for all regulatory purposes.

However, short code service is not a CMRS service. SMS is much different than short code service – and should be classified differently by the Commission. Short code services do not meet the definition of CMRS because they are not interconnected services that use the NANP telephone numbers over the public switched telephone network. As a consequence, short code services should not be classified as CMRS or a common carrier service under Title II of the Communications Act of 1934, as amended (the "Act") since Section 332 of the Act, which governs the regulatory treatment of mobile services, only accords common carrier treatment to

CMRS services. Moreover, short code services should not be regulated by the Commission under its ancillary jurisdiction under Title I of the Act because there should be a presumption against regulation of any mobile service in the absence of a clear showing of market failure.

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MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby respectfully submits comments on the Petition for Declaratory Ruling (the "Petition") filed by Public Knowledge, Free Press, Consumer Federation of America, Consumers Union, EDUCAUSE, Media Access Project, New America Foundation, and U.S. PIRG (the "Petitioners") requesting the Commission clarify the regulatory status of text messaging services, including short code based services, sent from and received by mobile telephones, and declare that such services are governed by the anti-discrimination provisions of Title II of the Communications Act in the above captioned proceeding.[2] Basic short text messaging services ("SMS") from mobile

[1] For purposes of these Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

[2] Petition for Declaratory Ruling of Public Knowledge, Free Press, Consumer Federation of America, Consumers union, EDUCAUSE, Media Access Project, New America Foundation, U.S. PIRG, filed December 11, 2007; Public Notice, "Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling that Text Messages and Short Codes are Title II Services or are Title I Services Subject to Section 202 Non-Discrimination Rules," WT Docket No. 08-7, DA 08-78 (rel. Jan. 14, 2008); *In the Matter of Petition for Declaratory Ruling that Text Messages and Short Codes are Title II Service or are Title I Services Subject to Section 202*

(continued...)

telephone number to mobile telephone number should be classified as commercial mobile radio services ("CMRS"), but MetroPCS believes that short code services are not CMRS, and should not be subject to CMRS or common carrier regulation.

I. PRELIMINARY STATEMENT

The use of SMS and SMS traffic has increased significantly over the past few years. As Petitioners correctly note, SMS is "rapidly becoming a major mode of speech in the United States, both as a replacement for and a complement to traditional voice communications."[3] Consumers expect SMS to be fully integrated and easily accessible along with traditional voice services in their mobile service plans. Importantly, as is discussed in greater detail below, SMS traffic that are sent between North American Numbering Plan ("NANP") telephone numbers fit easily into the definition of CMRS, and thus should be regulated under Title II of the Communications Act, of 1943, as amended (the "Act"). The Commission recently held in its automatic roaming order that SMS services are subject to common carrier regulation, including the non-discrimination requirements of Sections 201 and 202 of the Act.[4] The Commission should now clarify that SMS services are CMRS services for all regulatory purposes.

However, Petitioners are mistaken that short code services should be classified as CMRS services. The Petition does not acknowledge the material distinctions between SMS and short code services, but rather treats these distinct services as functional equivalents which merit the same regulatory status and treatment. SMS services are much different than short code services

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(...continued)

Non-Discrimination Rules, Order, WT Docket No. 08-7 (rel. Feb. 1, 2008) (extending Comment period deadline to March 14, 2008 and Reply Comment deadline to April 14, 2008).

[3] Petition at i.

[4] *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers,* Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 05-265, FCC 07-143 (rel. Aug. 16, 2007) ("*Roaming Order*").

– and should be classified differently by the Commission. As is discussed in greater detail within, analytically, short code services do not meet the definition of CMRS because they are not interconnected services that use the NANP over the public switched telephone network. As a consequence, short code services should not be classified as CMRS services subject to common carrier regulation under Title II of the Communications Act since Section 332 of the Act, which governs the regulatory treatment of mobile services, only accords common carrier treatment to CMRS services. Moreover, short code services should not be regulated by the Commission under its ancillary jurisdiction under Title I of the Act because there should be a presumption against regulation of a mobile service in the absence of a clear showing of market failure.

II. THE COMMISSION SHOULD CLARIFY THAT SMS SERVICE BETWEEN 10-DIGIT TELEPHONE NUMBERS IS A CMRS SERVICE

The Commission should declare that SMS traffic which is exchanged between 10-digit mobile telephone numbers within the NANP, which excludes short codes, are (a) CMRS services governed under Title II of the Act; and (b) thus are subject to, among other requirements, the anti-discrimination provisions of the Act. Because the Commission has not previously made a determination of whether SMS service is or is not CMRS service, any such classification of SMS service as a CMRS service should be made by the Commission on a prospective basis.[5]

As described by Petitioners, "[t]ext messaging services allow for the transmission of short communications between a phone and another phone or between a phone and a text-based service. Typically, text messages are sent through the Short Message Service ("SMS"), which allows for messages of up to 160 characters long to be sent."[6] While SMS messages commonly are sent from a mobile phone to another mobile phone using NANP telephone numbers, text

[5] One benefit of classifying SMS service as a CMRS service is that the Universal Service Fund requirements will apply to the revenues generated by such service.

[6] Petition at 2.

messages also can be sent to and from a mobile phone, a landline phone, or a computer. For the purposes of these comments, MetroPCS uses the terms "Text Messaging" and "SMS" to mean messages transmitted between a mobile 10-digit NANP telephone number and another mobile 10-digit NANP telephone number.[7]

The Commission should clarify that SMS service is a CMRS service, subject to the protections of Sections 201 and 202 of the Act. Under Section 332 of the Act, CMRS carriers providing CMRS service are subject to common carrier regulation. Specifically, Section 332(c)(1)(A) provides that a "person engaged in the provision of a service that is a commercial mobile radio service shall, insofar as such person is engaged, be treated as a common carrier."[8] Thus, the relevant determination here is whether SMS meets the definition of a "commercial mobile radio service." An examination of the relevant definitions confirms that such services should be classified as CMRS services. A "commercial mobile radio service" is defined as:

> A mobile service that is:
>
> (a)(1) provided for profit, i.e., with the intent of receiving compensation or monetary gain;
> (2) An interconnected service; and
> (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or
> (b) The functional equivalent of such a mobile service described in paragraph (a) of this section.[9]

An interconnected service is defined as:

> A service:
>
> (a) That is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability

[7] A SMS message between a mobile telephone and a landline or computer may be a common carrier service, but may not be a CMRS service for the landline service.

[8] 47 U.S.C. § 332(c)(1)(A).

[9] 47 U.S.C. § 20.3.

to communicate to or receive communication from all other users on the public switched network; or

(b) For which a request for such interconnection is pending pursuant to section 332(c)(1)(B) of the Communications Act, 47 U.S.C. 332(c)(1)(B). A mobile service offers interconnected service even if the service allows subscribers to access the public switched network only during specified hours of the day, or if the service provides general access to points on the public switched network but also restricts access in certain limited ways. Interconnected service does not include any interface between a licensee's facilities and the public switched network exclusively for a licensee's internal control purposes.[10]

Interconnected is defined as "[d]irect or indirect connection through automatic or manual means (by wire, microwave, or other technologies such as store and forward) to permit the transmission or reception of messages or signals to or from points in the public switched network."[11] Lastly, "public switched network" is defined as "[a]ny common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that use the North American Numbering Plan in connection with the provision of switched services."[12]

SMS service provided by a wireless carrier is properly defined as a CMRS service based upon these definitions. Such service is mobile service provided for profit and available for the use of the public. It is provided via interconnection to the public switched network and utilizes the NANP telephone numbers to allow users the ability to communicate with "all other users" over that network. As Petitioners note, "[f]or mobile phones, any user can contact any user using their NANP phone number."[13] These determinations establish that SMS service is properly classified as a CMRS service, and thus must by statute be treated as a common carrier service.

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[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] Petition at 9.

Furthermore, consumers view SMS service as part of the integrated package of services provided by CMRS providers. MetroPCS agrees with Petitioners that SMS service and voice communications are quickly becoming intertwined forms of speech, and that SMS service should be treated in a similar way under Title II as mobile voice services.[14]

Moreover, as noted by Petitioners, "text messaging does not fit within the Commission's previous orders classifying broadband Internet services as information services."[15] MetroPCS agrees that "[t]ext messaging services do not rely on the Internet and simply relay the user's communications from one place to another, without changing the form or content of the communications."[16] As a result, SMS service does not meet the definition of "information services," which means "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."[17] A SMS goes between two 10-digit NANP telephone numbers without being altered in any way by the CMRS provider.[18]

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[14] *Id.* at 13.

[15] *Id.* at 10.

[16] *Id.* at 11.

[17] 47 U.S.C. § 153(20).

[18] Unlike e-mail and other information services, SMS messages do not include additional information as part of the relay of the message. For example, unlike e-mail, the SMS message does not include header information relating to the message. Accordingly, the message is unchanged from end to end and thus is telecommunications and the provision of SMS services is a telecommunications service. As the Commission has previously observed, the definitions of information service and telecommunications service are mutually exclusive. *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 at para. 105 (rel. Sept. 23, 2005) ("*Wireline Broadband Order*"). Accordingly SMS service cannot be an information service.

The Commission recently touched on this issue, albeit without providing a definitive answer on the proper regulatory classification for SMS service, in its automatic roaming proceeding.[19] While the Commission noted that "nothing in this order should be construed as addressing regulatory classifications of push-to-talk, SMS or other data features/services,"[20] it held that SMS "offerings are typically bundled as a feature on the handset with other CMRS services, such as real-time, two-way switched mobile voice or data, that are interconnected with the public switched voice network."[21] The Commission stated that "consumers consider push-to-talk and SMS as features that are typically offered as adjuncts to basic voice services, and expect the same seamless connectivity with respect to these features and capabilities as they travel outside their home network services," and thus it was in the "public interest to impose an automatic roaming obligation on push-to-talk and SMS offerings. . ."[22] Even though the Commission stated that "push-to-talk and SMS are interconnected features or services in some instances, but non-interconnected in others, depending on the technology and network configuration chosen by the carriers,"[23] it still included both features among the interconnected services subjected to automatic roaming.[24] The Commission should now take the next step and classify such services as CMRS services subject to Title II regulation.

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[19] *See Roaming Order.*

[20] *Id.* at ft. nt. 134.

[21] *Id.* at para. 55.

[22] *Id.* at para. 55.

[23] *Id.* at para. 55.

[24] Further, since SMS messages are switched by the mobile switching office they are considered interconnected even if the public switched network is never used to deliver the message to other carriers. A mobile switching office is part of the PSTN and therefore SMS service is an interconnected service.

Based on the relevant definitions, as well as the Commission's initial determination in its automatic roaming proceeding, SMS service is a CMRS service, and "the Commission should clarify that SMS is a common carrier service subject to section 202 in all contexts."[25] Consumers consider SMS service to be a major part of their service plan with mobile carriers, and a review of the applicable definitions confirms that the Commission should ensure that Title II protections are afforded to such services.

III. SHORT CODES ARE MATERIALLY DIFFERENT FROM SMS AND SHOULD NOT BE REGULATED

Short codes are different than SMS, and should be classified as "information services" rather than as CMRS or Title II common carrier services. While short codes may use a similar input method as SMS, they are processed differently, handled differently, and do not serve the same purposes or have the same result as SMS. Consequently, the provisioning of short codes does not meet the definition of CMRS service and therefore should not be subject to Title II regulation. Moreover, short codes services have only recently started to emerge in the marketplace. The Commission should not exercise its ancillary jurisdiction under Title I of the Communications Act to apply the nondiscrimination portions of Title II to these nascent short code services, as there has been no demonstrated market failure in the provisioning of such services.

As described by Petitioners, "[s]hort codes are typically five or six digits and are usually used for text-based services. . ."[26] These codes, although telephone numbers, do not conform to the NANP. Rather, these codes are administered by the Common Short Code Administration ("CSCA"), which rents them to applicants for between $500 and $1,000 a month. Petitioners

[25] Petition at 9.

[26] *Id.* at 3.

note that "[o]nce the CSCA has assigned a short code to an applicant but before that short code will function, each mobile carrier must provision that code to the customer, usually through a third-party "aggregator" which handles the provisioning across multiple carriers."[27] Importantly, Petitioners note that "[s]hort codes are special phone numbers which are shorter than North American Numbering Plan phone numbers."[28] Such short code services often require an additional fee to be paid either by the customer or the short code provider to the carrier in order to access certain information-type services.

A. Short Codes are Not Title II Services

Short codes do not meet the definitions necessary for them to be classified as CMRS service, which would give rise to common carrier regulations under Title II. As earlier noted, the definition of "commercial mobile radio service" requires that a service be "interconnected"[29] "with the public switched network"[30] and use "the North American Numbering Plan in connection with the provision of switched services."[31] Short code services do not satisfy these criteria.

According to CTIA's common short code FAQ:

> a wireless subscriber is made aware of a common short code ("CSC"), whether through TV, radio, online or through an advertisement, and asked to send a text message to the CSC. The wireless subscriber then addresses a text message to the CSC number (e.g. 74678) and enters text into the message as directed. Once the wireless subscriber sends the message, it is routed through the wireless service providers' network to the SMS messaging server. The SMS messaging server then determines where to route the message based on to which CSC the message is addressed. The message is then routed to the appropriate company for delivery of the message to the application that corresponds to the CSC. The application

[27] *Id.* at 3.

[28] *Id.* at 3. These codes also are distinct from the N11 codes administered by NANP.

[29] 47 U.S.C. § 20.3.

[30] *Id.*

[31] *Id.*

> receives the message and routes it through the software application, which could include sending a confirmation or follow-up message back to the wireless subscriber who originated the message.[32]

This description makes no mention of switching by the mobile switching office or routing via interconnection to the public switched network, and indeed short code message generally go directly to the appropriate company via other means. And, short code services do not use the North American Numbering Plan. Short codes use 5 or 6 digit numbers that are assigned outside of the North American Numbering Plan; indeed, short code services are specifically designed to circumvent the 10-digit based North American Numbering Plan. The Commission previously has noted that "use of the North American Numbering Plan by carriers providing or obtaining access to the public switched network is a key element in defining the network because participation in the North American Numbering Plan provides the participant with ubiquitous access to all other participants in the plan."[33] Short code services are not intended to provide such ubiquitous access. Thus, all things considered, short code services, properly viewed, cannot be deemed to be interconnected CMRS service utilizing the NANP over the public switched telephone network. It is also important to note that the definition of an interconnected service "focuses on the service provided to end users."[34] Similar to the Commission's classification of wireless broadband as an "information service," the provisioning of short code services does not "give subscribers the capability to communicate to or receive communications for *all other users*

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[32] "Basics of CSC FAQS, CTIA – The Wireless Association, *available at* http://www.ctia.org/business_resources/short_code/index.cfm/AID/10341 (visited March 3, 2008).

[33] *In the matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, FCC 07-30, WT Docket No, 07-53 at para. 44 (rel. Mar. 23, 2007) ("*Wireless Broadband Order*").

[34] *Id.* at para. 43.

on the public switched network."[35] Rather, the provisioning of short code services only allows for communication to prearranged specific users – primarily for the purposes of obtaining information services, as noted below. Short code services are provisioned by each mobile carrier on an individualized basis. Companies wanting to use short codes make arrangements, including financial arrangements, with each wireless carrier separately. As Petitioners note, "each carrier must agree to receive incoming messages from a given short code and route outgoing messages to the entity renting the code"[36] Such limited, non-ubiquitous services are not appropriate for Title II protection under the relevant definitions.

Further, short codes are typically used by third parties to run marketing or other campaigns to mobile users and, thus, such third parties are obligated to negotiate financial arrangements with the carriers. The issue that the Petitioners ignore is that they are essentially seeking interconnection rights on the mobile carriers' systems - - something that they are not accorded under the Act, nor should they be accorded. The provisioning of short code service is similar to other parties who are trying to sell services to the mobile carrier - - they should have to negotiate and pay the mobile providers for the service provided. Since the service is not CMRS service nor common carrier service, they will need to negotiate a market rate for such services.

Short code services would be better defined by the Commission as "information services," not subject to Title II of the Act. The Petition identifies companies which have utilized short codes for a number of different services, which generally appear to fall into a classification of "information services." This includes the Working Assets campaign's use of the Mobile Commons' mConnect service, which "allows groups using their short code platform to take people who have chosen to receive text alerts, and directly connect them, via voice, to the

[35] *Id.* at para. 45.

[36] Petition at 10.

number of their choice after played a prerecorded message to prepare them."[37] Similarly, CTIA's FAQ on short codes notes that "[a] common short code allows an individual to send text messages to mobile applications including voting, polling, games, contests, coupons, mobile payment, and a variety of other exciting interactive applications."[38] These examples of short code services clearly involve "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications . . ."[39] Such services are substantially different from the SMS services noted above which are used in the same manner as voice services. This confirms that the Commission should not classify the provisioning of short codes as a CMRS service subject to Title II common carrier regulations.

B. The Commission Should Not Use its Ancillary Jurisdiction to Regulate Short Code Services

Short codes should not be regulated by the Commission and made subject to a non-discrimination mandate using the Commission's ancillary jurisdiction under Title I of the Act. Section 332 of the Act, which governs mobile services, establishes that CMRS services shall generally be treated as common carrier services, but also allows the Commission to specify by regulation that certain provisions of Title II will be inapplicable to a particular service based upon a finding that such an exemption would serve the public.[40] This reflects the general philosophy that less regulation is necessary and appropriate when a service is highly competitive.

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[37] *Id.* at 14.

[38] "Basics of CSC FAQS, CTIA – The Wireless Association, *available at* http://www.ctia.org/business_resources/short_code/index.cfm/AID/10341 (visited March 3, 2008). Perhaps the best known example is that short codes have been used for American Idol voting – in which a consumer sends a message to a particular short code to vote for a particular singer.

[39] 47 U.S.C. § 153(20).

[40] *See* 47 U.S.C. § 332(c)(1)(A).

In the recently issued Twelfth Annual CMRS Competition Report,[41] the Commission concluded that "U.S. consumers continue to reap significant benefits – including low prices, new technologies, improved service quality and choice among providers – from competition in the commercial mobile radio services. . ."[42] The fact that the CMRS market is "effectively competitive" means that "competitive pressures continue to result in the introduction of innovative pricing plans, and service offerings."[43] Most important for this proceeding, the Commission has recognized that "[i]n the past year providers have continued to exhibit competitive rivalry in introducing new mobile data offerings and responding to rivals' existing offerings"[44] and to "differentiate themselves and to exhibit competitive rivalry with respect to their business models for the sale of mobile data services."[45] Notably absent from the Twelfth Annual Report is any finding that there is any market failure with respect to the developing market for short code services. Thus, while the Commission may have ancillary jurisdiction in this instance to regulated Title I "information services," it need not exercise such jurisdiction unnecessarily or prematurely.

Notably, Petitioners have demonstrated no market failure in the provisioning of short code services. Indeed, while the provisioning of short codes services is still a relatively nascent industry, Petitioners point out that it is quickly becoming a successful way to create new

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[41] *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Twelfth Report, WT Docket No. 07-71, FCC 08-28 (rel. Feb. 4, 2008).

[42] *Id.* at para. 1.

[43] *Id.* at para. 83, ft. nt. 171. This is in sharp contrast to the situation in the roaming services market where there has been a market failure and Commission intervention was necessary and appropriate to ensure that ubiquitous roaming coverage was available.

[44] *Id.* at para. 171.

[45] *Id.* at para. 176.

marketing initiatives as well as innovative applications. And, NeuStar recently noted that "Common Short Code (CSC)-based messaging campaigns have been cited as an "unprecedented platform for marketing" in a recent report published by mobile media research firm M:Metrics."[46] With short code services continuing to increase in popularity – along with the incentives of mobile wireless carriers to continue to nourish this nascent market – there is no need for the Commission to interject unnecessary regulation into the mix.

Petitioners argument in favor of regulation largely centers on Verizon Wireless' refusal to allow the organization NARAL to use a short code based campaign over its network.[47] However, Verizon Wireless reversed its decision soon after its initial determination, and allowed NARAL access to its network for the provisioning of short codes services.[48] Petitioners are unable to point to any other instances of carriers denying the provisioning of short codes on first amendment grounds. Petitioners suggest that wireless carriers have declined the provisioning of a short code service in support of a competitor's competing VoIP service, but MetroPCS notes that no VoIP service provider that was the alleged target of such a practice is a party to the Petition.[49]

Petitioners reference a number of the benefits that short code services may be able to provide – including in the field of public health – but they are unable to demonstrate instances of

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[46] "M:Metrics Study: 92.5 Active SMS Users Make Short Code-Based Mobile Marketing the Most Effective Platform for Mobile Advertisers," NeuStar Press Release, October 23, 2007.

[47] Petition at 4.

[48] Regardless of whether Verizon Wireless should or should not have initially denied NARAL access, carriers must have the right to determine what messages are sent or displayed to their customers, especially if those messages may be considered offensive to the recipient.

[49] Even if this is true, carriers should not be obligated to allow third parties to use their network to advertise their services for no charge. Further, since there is no clear showing that these providers are telecommunications carriers, the other provisions of the Act (e.g., Section 251) would not apply.

discrimination in these fields – because such discrimination does not appear to exist. Rather, the competitiveness of the wireless industry is what allows such new and innovative services to exist and thrive. It would not be in the public interest for the Commission to insert itself into the market for short code services – as wireless carriers already have the necessary incentives to promote this industry, not to restrict access to such services.

In addition, there are legitimate reasons for carriers to want to retain the ability to review whether certain short code services should be provisioned over their networks. As Verizon has stated, the goal of its policies regarding short code services was to "ward against communications such as anonymous hate messaging and adult materials sent to children."[50] Wireless carriers also have an interest in ensuring that consumers are not flooded with SPAM, are not charged for messages without their consent, and are not sent inappropriate or adult-content themed messages – all reasonable protections afforded to consumers. In addition, T-Mobile has noted in this docket that the process that it follows for the provisioning of short code services "is fairly standard and uniform," and that such services are evaluated under "established MMA and content guidelines."[51] Moreover, with substantial competition in the wireless industry, wireless providers have incentives to not discriminate against the provisioning of short code services – as such short code providers can just as easily seek the provisioning of a short code on a rival carrier's network. It is not in the best interests of wireless carriers to unnecessarily discriminate against short code providers – however, it is in the best interests of wireless carriers to protect consumers from unneeded and unwanted services.

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[50] Petition at 4; Adam Liptak, *Verizon Reserves Itself on Abortion Messages*, New York Times, Sept. 27, 2007.

[51] Letter from David H. Solomon, Counsel to T-Mobile USA, Inc. to Marlene H. Dortch, FCC Secretary, WT Docket No 08-7, filed Mar. 4, 2008.

The Commission previously has declined to exercise its ancillary jurisdiction in situations where appropriate market-driven business incentives exist to discourage discrimination. For example, the Commission decided not to apply common carrier regulations on wireline broadband providers in the wireline broadband proceeding because such providers had incentives to make broadband Internet access available to unaffiliated Internet Service Providers ("ISPs"),[52] and that such business incentives were "significant" enough to decline to impose a mandatory common carrier broadband transmission requirement.[53] Since similar business incentives exist for the provisioning of short code services, the Commission should decline to impose common carrier requirements upon such provisioning of short code services. In addition, the Commission declined to adopt certain Title II obligations to wireless broadband Internet access service because such services were "still at the nascent stage," even though such services were being "rapidly developed and deployed."[54] The Commission should apply the same "hands-off" policy to the provisioning of short code services.

[52] *Wireline Broadband Order* at paras. 74-76.

[53] *Id.* at para. 75.

[54] *Wireless Broadband Order* at para. 59.

IV. CONCLUSION

For the foregoing reasons, the Commission should clarify that SMS services are Title II services under the Communications Act and that short code services should not be regulated by the Commission at this time.

Respectfully submitted,

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March 14, 2008

CERTIFICATE OF SERVICE

I, Michael L. Lazarus, hereby certify that a true and correct copy of the foregoing Comments of MetroPCS Communications, Inc. was delivered First-class mail this 14th day of March 2008 to the individuals on the following list:

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